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OFFICE OF PETITIONS

FISH & RICHARDSON PC  
PO BOX 1022  
MINNEAPOLIS MN 55440-1022

In re Application of :  
Fallon :  
Application No. 09/990,909 : ON PETITION  
Filed: November 17, 2001 :  
Attorney Docket No. 25324-0021001 :

This is in response to petition to revive an unintentionally abandoned application under 37 CFR 1.137(b), filed November 13, 2009.

The petition under 37 CFR 1.137(b) is GRANTED.

The above-identified application became abandoned for failure to timely file an Appeal Brief. The Office mailed a final action on July 27, 2004, which set a shortened statutory period for reply of three months. Applicant filed a Notice of Appeal on January 27, 2005, made timely by obtaining a three month extension of time. However, as Applicant did not file an Appeal Brief within two months of the Notice of Appeal, the application became abandoned on March 28, 2005. The Office mailed a Notice of Abandonment on January 4, 2006.

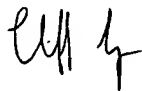
With the instant petition, petitioner paid the petition fee, made the proper statement of unintentional delay, and submitted the required reply in the form of a Request for Continued Examination.

Pursuant to 37 CFR 1.136, an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Accordingly, since the \$1175.00 extension of time fee submitted with the petition was subsequent to the maximum period obtainable for reply (August 27, 2005), this fee has been refunded to petitioner's Deposit Account No. 06-1050.

The application has been abandoned for an extended period of time. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting the statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178; 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109) (applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the Patent and Trademark Office).

The application is being forwarded to Group Art Unit 1648 for consideration of the RCE, filed November 13, 2009.

Telephone inquiries concerning this decision may be directed to the undersigned at 571-272-3207.



Cliff Congo  
Petitions Attorney  
Office of Petitions